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C O N F I D E N T I A L SECTION 01 OF 03 JAKARTA 000514

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SUBJECT: JUDICIAL COMMISSION FAILS TO ADVANCE REFORM

Classified By: Political Officer Adam West for reasons 1.4(b) and (d).

Summary

¶1. (SBU) The Judicial Commission, formed in 2005 to strengthen the accountability and integrity of the judiciary, has fallen far short of expectations and has yet to play a constructive role in judicial reform. The Commission's primary task, to monitor the behavior of judges and recommend sanctions against those who fail to meet certain ethical standards, was both controversial and bound to provoke opposition from the judiciary. However, the Commission's aggressive tactics soon went beyond its initial mandate and brought it into open conflict with the Supreme Court. As a result, the Commission's supervisory authority was challenged and finally annulled by the Constitutional Court in August ¶2006. The Commission's other main responsibility, the selection of Supreme Court candidates, has been equally problematic. Parliament has so far refused to act on any of the Commission's initial recommendations, and the future of the nomination process is in doubt. While the Commission still has its defenders, many observers attribute its problems to its own failure to properly exercise its original mandate. End Summary

A Needed Instrument for Reform

¶2. (U) Legal uncertainty has been repeatedly cited as a major concern in corruption and investment climate reports about Indonesia. The judiciary has long been plagued by allegations of corruption and a culture of impunity summed up in the oft-repeated phrase "judicial mafia." Under the Constitution, the Supreme Court has the authority to investigate and sanction judges who violate ethical norms. However, the court itself has been the subject of corruption allegations and justices have been reluctant to wield their supervisory powers forcefully.

¶3. (U) In an attempt to address these issues, Parliament in 2003 authorized the creation of a Judicial Commission (known by the initials KY in Indonesian) to improve judicial integrity and accountability and serve as a catalyst for judicial reform. The body was inaugurated in August 2005 with the appointment of seven members, including several legal scholars, a former parliamentarian and a former prosecutor. Busyro Muqqudas, former Dean of Law at Indonesia Islamic University and member of the NGO Indonesia Corruption Monitoring, was selected to head the group. Two foreign donors, the Partnership for Governance Reform in Indonesia and the Norwegian Embassy, provided initial support. The KY's specific tasks were twofold: to investigate allegations

of judicial misconduct; and to nominate candidates to fill vacancies on the Supreme Court. Eighteen months later, the KY has been stripped of authority on the first count and largely failed on the second, and is struggling to remain relevant to the judicial reform agenda.

Supervising The Courts

¶4. (SBU) After its inauguration in August 2005, the KY took an aggressive approach to its role as monitor of judges' behavior. It also adopted what Embassy contacts describe as an overly expansive view of what constitutes judicial misconduct. The KY's non-binding Draft Code of Ethics, which it unilaterally released in September 2006, defines judicial misconduct as including not only unethical behavior on the part of judges but also court decisions that, while justifiable on legal grounds, do not sufficiently reflect the "community's sense of justice." This ill-defined concept seemingly allowed the KY to challenge court decisions regardless of whether or not there was evidence of impropriety.

¶5. (C) The KY's invitation to the Indonesian public to submit complaints about judicial decisions led to a flood of letters that reportedly reached over 1,000 by November of 2006. According to KY member Chatarramasjid, the KY carefully screened out frivolous complaints and focused only on the 200 or so considered to have merit. However, the KY's findings more often than not took issue with the content of the decision rather than the behavior of the judge. Moreover, the KY chose to air their findings through the media rather than through institutional channels, a practice that Embassy contacts told us was considered unprofessional by legal

JAKARTA 00000514 002 OF 003

practitioners. By the end of 2006 the KY had submitted the names of 18 judges to the Supreme Court for disciplinary action. Seven judges were suspended by the Court for periods of between six months and two years, representing a modest success for the KY. The rest received written reprimands.

Mounting Altercation with the Supreme Court

¶6. (SBU) The light punishments led some KY members to complain about lack of support from the Court, many of whose members were opposed to judges being subject to supervision by a body outside the Court's control. The KY's public criticism of the content of judicial decisions, in turn, led to complaints by judges and other legal experts that the KY had gone beyond its mandate and was now second-guessing judges' decisions in the manner of an appellate court.

¶7. (SBU) As the debate grew more contentious the KY took aim at the Supreme Court itself. In January 2006, the KY issued a list of Justices that it considered to be "problematic" and recommended that President Yudhoyono compel all 49 Supreme Court Justices to undergo "re-evaluation" to determine whether they were suitable to continue to serve on the court. Despite initial expressions of support, Yudhoyono did not take any action on the proposal. No official explanation was ever given for this, but the effect was to further damage the KY's public image and public confidence in its effectiveness.

¶8. (SBU) Undeterred, the KY then requested that Chief Justice Bagir Manan appear before it to answer questions about bribery allegations made by the lawyer of Probo Sutedjo, a prominent businessman who had been convicted on corruption charges. Manan refused, stating that he had already given testimony to the Anti-Corruption Commission (KPK), the legal authority investigating the case. While this conflict was playing out in the press, the Supreme Court struck back: more than 30 Justices filed suit against the KY with the Constitutional Court, claiming that the legal basis for the KY's judicial oversight role was ambiguous, and that KY

actions were threatening judicial independence. The Constitutional Court agreed, ruling on August 23, 2006 that the provision granting the KY the power of judicial oversight was unconstitutional.

Supreme Court Nominees: A Flawed Process

¶9. (SBU) The KY's other major responsibility, the nomination of candidates to fill vacancies on the Supreme Court, has also remained largely without effect. One legitimate criticism that can be leveled against the KY is that the number of candidates that the KY submitted to Parliament for consideration was less than the number required. According to the authorizing legislation, the KY should nominate three candidates for each vacancy on the court, i.e. 18 candidates for the six vacant seats. However, after reviewing some 130 candidates, the KY submitted only six names to Parliament, i.e., one for each vacancy. Parliamentarians publicly criticized the move, which was interpreted by some as an attempt to reduce Parliament's role to that of a rubber stamp. The legislature eventually decided to put off consideration of the six until the KY submitted the appropriate number of names. The KY immediately reopened the nomination process and invited the Supreme Court and NGOs to submit nominees. Press reports state that 59 names have been submitted so far; 33 of these were among those whom the KY had rejected in 2006.

¶10. (C) Aside from the number of candidates, criticism has also surfaced about the quality of the six who were nominated and the selection process itself, which included an essay exercise, a health examination, and a psychological assessment which KY members describe as a "moral examination." One legal expert privately described the assessments as more suitable to college entrance requirements than to tests for high court judges, whom he said should be judged based on their prior case decision records. Moreover, one of the six nominees is currently under investigation for corruption allegations. Justice Djoko Sarwoko told us that members of the Supreme Court were disappointed that only two of the six nominees submitted to Parliament had any prior experience as judges. Perhaps most damaging to the KY's future, Aulia Rahman, who serves on the Parliamentary Sub-committee responsible for evaluating the nominees, confided that he no longer has confidence in the KY's capacity to recruit good candidates.

JAKARTA 00000514 003 OF 003

Losing support

¶11. (SBU) The KY continues to have supporters in the press and the NGO community, for whom its goals remain relevant, despite the KY's missteps in execution. The August 23 Constitutional Court decision was widely criticized, with Attorney General Abdul Rahman Saleh and others publicly declaring it a "victory for corruptors." However, the KY's credibility within the judicial community, which has viewed it with suspicion from the start, has clearly fallen. So has its support in Parliament. Several contacts told us that the KY is no longer respected by the members of other legal institutions and asserted that its leadership was more interested in garnering headlines than in serving the public interest. Moreover, six months after the August 23 decision, Parliament has yet to take any action to restore or otherwise redefine the KY's supervisory function, despite considerable public support for doing so. The Judiciary's implicit aversion to external oversight made it inevitable that the KY's mission would be problematic. However, its own poor performance has alienated many of its supporters within the DPR and left it nearly toothless. The KY will need to change course significantly if it is to play a constructive role as an instrument of reform.

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